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SENATE

{ REPORT
No. 2082

AMENDING SECTION 25 OF THE TENNESSEE VALLEY AUTHORITY ACT OF 1933, AS AMENDED

JULY 3 (legislative day, JUNE 27), 1952.—Ordered to be printed

Mr. CHAVEZ, from the Committee on Public Works, submitted the following

REPORT

[To accompany H. R. 3209]

The Committee on Public Works, to whom was referred the bill (H. R. 3209) amending section 25 of the Tennessee Valley Authority Act of 1933, as amended, report favorably thereon without amendment and recommend that the bill do pass.

The bill provides for an increase in the per diem and subsistence allowance for commissioners employed by the Tennessee Valley Authority in condemnation proceedings. The compensation provided in the Tennessee Valley Act of 1933 was \$15 per day for services and a per diem allowance of \$5 for subsistence. This bill would raise the per diem compensation to \$30 and per diem subsistence to a maximum of \$10. It would also provide for reimbursement of actual transportation expenses, including an allowance of not to exceed 7 cents per mile for use of privately owned automobiles.

The commissioners referred to are those appointed by the courts to determine the value of property sought in condemnation proceedings instituted by the TVA. These commissioners usually consist of one lawyer and two real-estate men from an area who are familiar with local conditions. Pay at the present rate constitutes a hardship on these commissioners, and makes it difficult for the courts to obtain competent commissioners for this work. The per diem subsistence allowance would be paid for the time the commissioners spent away from the cities in which they reside.

The committee believes that the change in economic conditions since the original act was passed in 1933 warrants enactment of this bill to permit payment of adequate compensation for well-qualified commis-

2 AMEND SECTION 25 OF TENNESSEE VALLEY AUTHORITY ACT

sioners. The district courts can adjust compensation and allowances within the maxima provided under this bill to meet existing circumstances.

The estimated increase in cost to the United States as a result of raising the commissioners' fees as provided in H. R. 3209 would be approximately \$2,200 annually.

The Bureau of the Budget and the TVA are favorable to enactment of this legislation. The Department of Justice and the Comptroller General of the United States do not make a positive recommendation on the matter. Their comments follow:

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., April 25, 1951.

HON. DENNIS CHAVEZ,
Chairman, Committee on Public Works,
United States Senate, 412 Senate Office Building,
Washington, D. C.

MY DEAR SENATOR CHAVEZ: This will acknowledge your letter of April 4, 1951, requesting the views of the Bureau on S. 1165, amending section 25 of the Tennessee Valley Authority Act of 1933, as amended.

The proposal would increase the present statutory maximum limitation upon the per diem compensation and the daily subsistence allowance for commissioners appointed by the district courts of the United States to appraise the value of land sought to be condemned by the Tennessee Valley Authority. The increases in each case would be 100 percent, the compensation limitation being increased from \$15 to not more than \$30, and the subsistence allowance being increased from \$5 to not more than \$10 per day.

The Bureau of the Budget would have no objection to the enactment of this legislation.

Sincerely yours,

F. J. LAWTON, *Director.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., May 24, 1951.

HON. DENNIS CHAVEZ,
Chairman, Committee on Public Works,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to the bill (S. 1165) amending section 25 of the Tennessee Valley Authority Act of 1933, as amended.

The bill would increase the per diem and subsistence pay for commissioners in condemnation proceedings, appointed pursuant to the provisions of the Tennessee Valley Authority Act of 1933, as amended. Per diem compensation would be raised from \$15 to \$30 and per diem subsistence from \$5 to not more than \$10. In addition, the bill would provide for an allowance for the use of privately owned automobiles by commissioners at a rate not to exceed 7 cents per mile.

While the bill presents questions of legislative policy concerning which the Department of Justice prefers not to make any recommendation, your committee may wish to consider whether the subsistence pay should be raised to an amount higher than presently provided for the Government's own employees, namely a maximum of \$9. The Government is now actually paying an average of about \$8, which includes pay for subsistence in large metropolitan areas where the cost of living is higher on the average than in rural areas where Tennessee Valley Authority condemnation cases occur.

The Director of the Bureau of the Budget has advised that there is no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D. C., April 16, 1951.

HON. DENNIS CHAVEZ,
Chairman, Committee on Public Works,
United States Senate.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of April 4, 1951, acknowledged by telephone April 6, requesting such suggestions as I may deem proper upon the merits of S. 1165, entitled "A bill amending section 25 of the Tennessee Valley Authority Act of 1933, as amended."

The bill provides as follows:

"That the fourth sentence of section 25 of the Tennessee Valley Authority Act of 1933, as amended (48 Stat. 70; 16 U. S. C., sec. 831x), is hereby amended to read as follows:

"Such commissioners shall receive a per diem of not to exceed \$30 for their services, together with an additional amount of not to exceed \$10 per day for subsistence for time actually spent in performing their duties as commissioners, and reimbursement of actual transportation expenses including an allowance for use of privately owned automobiles at a rate not to exceed 7 cents per mile."

The provision proposed to be amended by the above bill, section 25, act of May 18, 1933 (48 Stat. 70, 16 U. S. C. 831x), now provides:

"* * * Such commissioners shall receive a per diem of not to exceed \$15 for their services, together with an additional amount of \$5 per day for subsistence for time actually spent in performing their duties as commissioners."

The commissioners referred to in the proposed legislation are those appointed by the court to determine the value of land sought in condemnation proceedings instituted by the Tennessee Valley Authority. In view of the nature of the services to be rendered and the general increases in wages and salaries since their compensation was fixed by law in 1933, there would appear to be considerable merit in the proposed amendment. However, the General Accounting Office has no record of information regarding the subject matter and can make no official recommendation with respect thereto.

Sincerely yours,

LINDSAY WARREN,
Comptroller General of the United States.

TENNESSEE VALLEY AUTHORITY,
Knoxville, Tenn., April 10, 1951.

Re S. 1165, amending section 25 of Tennessee Valley Authority Act of 1933, as amended.

HON. DENNIS CHAVEZ,
Chairman, Committee on Public Works,
412 Senate Office Building, Washington, D. C.

DEAR SENATOR CHAVEZ: This is in response to your letter of April 4, 1951, requesting that we furnish the Committee on Public Works with our views as to the merits of the above bill and the propriety of its passage. We believe that the bill should be enacted.

Section 25 of the Tennessee Valley Authority Act prescribes the procedure in condemnation proceedings instituted for the acquisition of lands, easements, and rights-of-way required to carry out the provisions of the TVA Act. It provides that the value of the property sought to be condemned shall be determined by three commissioners. The commissioners are appointed by the court and receive "a per diem of not to exceed \$15 for their services, together with an additional amount of \$5 per day for subsistence for time actually spent in performing their duties as commissioners."

The above bill would increase the compensation of the commissioners from a maximum of \$15 to a maximum of \$30 a day and would increase their subsistence allowance from \$5 to a maximum of \$10 a day. It would also provide expressly for the payment of the actual transportation expenses of commissioners, including allowance for privately owned automobiles at a rate not to exceed 7 cents per mile. Within the maxima permitted by the bill, the district courts would be free to adjust compensation, subsistence allowances, and allowances for use of privately owned automobiles to accord with the circumstances in particular localities and cases.

We believe that enactment of the bill is necessary to insure the continued appointment of well-qualified commissioners in TVA condemnation cases. The

4 AMEND SECTION 25 OF TENNESSEE VALLEY AUTHORITY ACT

compensation provided in section 25 of the TVA Act was adequate under the economic conditions which existed when the act was passed in 1933, but it is now so inadequate that it has become difficult for the courts in some districts to obtain or retain well-qualified commissioners.

In order to retain the benefit of their experience and to obtain a measure of uniformity in condemnation awards, it has been the custom of the courts in the various districts either to appoint a single commission which tries all cases in the district, or a single commission in each division of the district which tries all cases within that division. The three commissioners conduct a hearing on the question of just compensation, which may last from a few hours to several days depending upon the complexity of the case, inspect the land, and make an award. In districts where the condemnation program is relatively heavy, particularly in the eastern and middle districts of Tennessee, they are called upon to devote considerable time to their duties, and service at the compensation now provided for by statute thus imposes a substantial sacrifice.

In over 90 percent of TVA condemnation cases the awards of the commissions have been accepted by the parties, and in more than half of the appealed cases the commission awards have been affirmed by the courts without change. The commission is, therefore, the tribunal which finally determines the issue of just compensation in most cases. In recognition of the importance of the commission's functions, the courts have uniformly selected an experienced practicing lawyer as chairman of the commission. The other two members of the commission have almost invariably been experienced real estate men or substantial farmers who have had extensive dealings in real estate.

The increase in cost to the Government, which would result from raising the commissioners' fees as provided in the above bill, would not be great. In the fiscal year ending June 30, 1950, commissioners in TVA condemnation cases were paid fees of \$15 per day for a total of 123 days and subsistence of \$5 per day for a total of 64 days, making a total payment of \$2,165 for fees and subsistence. The difference between the 64 days subsistence and the 123 days commissioners' fees reflects the fact that subsistence is paid only when it is necessary for the commissioners to try cases at some place other than their residence. Had the bill been in effect at the beginning of the last fiscal year, therefore, the increased cost for fees and subsistence during the fiscal year would have been \$2,165 if the courts had allowed, in all cases, the maximum \$30 fee and the minimum \$10 subsistence permissible under the bill. We believe this increase in cost is fully justified by the importance of assuring the continuance of commissioners of the same high quality as have served in TVA cases in the past.

This report has been submitted to the Bureau of the Budget, which advises that these views accord with the President's program.

Sincerely yours,

GORDON R. CLAPP,
Chairman of the Board.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

The fourth sentence in section 25 of the Tennessee Valley Authority Act of 1933, as amended:

Such commissioners shall receive a per diem of not to exceed ~~[\$15]~~ \$30 for their services, together with an additional amount of ~~[\$5]~~ \$10 per day for subsistence for time actually spent in performing their duties as commissioners, and reimbursement of actual transportation expenses including an allowance for use of privately owned automobiles at a rate not to exceed 7 cents per mile.

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